

Message Text

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ACTION EB-08

INFO OCT-01 EA-10 ISO-00 AGRE-00 CEA-01 CIAE-00
COME-00 DODE-00 FRB-03 H-01 INR-10 INT-05 L-03
LAB-04 NSAE-00 NSC-05 PA-01 CTME-00 AID-05 SS-15
STR-07 ITC-01 TRSE-00 USIA-06 SP-02 SOE-02 OMB-01
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E.O. 11652: N/A
TAGS: EFIN, ID
SUBJECT: PROPOSED US-INDONESIA INCOME TAX TREATY

REF: (A) 77 STATE 227255, (B) 77 JAKARTA 9044, (C) 77 STATE 147621

1. SUMMARY: EXPECTED IMMINENT SETTLEMENT OF QUESTION OF U.S. OIL COMPANY PAYMENTS TO GOI SHOULD ELIMINATE ONE OF THE THREE REMAINING OBSTACLES TO CONCLUSION OF A US-GOI INCOME TAX CONVENTION. REPORTED PROGRESS IN THE LOS ARCHIPELAGO NEGOTIATIONS HOPEFULLY MEANS THAT QUESTION OF INDONESIAN BOUNDARIES WHICH HAS PLAGUED NEGOTIATIONS FOR YEARS ALSO NEED NO LONGER BE AN OBSTACLE. WE HOPE THESE DEVELOPMENTS HAVE CREATED A CLIMATE FAVORABLE FOR SETTLEMENT OF THIS LONG-STALLED EFFORT AND THAT THE DEPARTMENT IS PREPARED TO RESUME NEGOTIATIONS IN THE NEAR FUTURE. END SUMMARY.

2. IN REF C DEPARTMENT PROPOSED WHAT IT HOPED WOULD BE AN ACCEPTABLE SOLUTION TO WHAT USG THOUGHT WAS THE ONLY REMAINING OBSTACLE TO CONSLUSION OF A TREATY, I.E., DEFINITION OF THE TWO COUNTRIES. IN REF B EMBASSY ADVISED DEPARTMENT THAT NOT ONLY WAS PROPOSED SOLU-
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TION UNACCEPTABLE TO GOI BUT THAT IN GOI VIEW TWO OTHER PROBLEMS -- NON-DISCRIMINATION AND OIL PAYMENTS -- ALSO HAD YET TO BE AGREED UPON. REF A EXPRESSED DEPARTMENT DISAPPOINTMENT THAT ISSUES IT THOUGHT LONG SETTLED, I.E., NON-DISCRIMINATION AND TAXES COVERED WERE BEING REOPENED, AND THAT GOI WAS PRESSING FOR WORDING SUPPORTIVE OF ITS ARCHIPELAGIC CONCEPT.

3. IN THE INTERVENING MONTHS SEVERAL DEVELOPMENTS HAVE TAKEN PLACE WHICH MAY BEAR ON THE SITUATION. FIRST IS THAT THE QUESTION OF OIL PAYMENTS IS EXPECTED TO BE SETTLED SHORTLY, THUS ELIMINATING ONE OF THE THREE STUMBLING BLOCKS. SECOND, FROM STATE 198699 (20 AUG 1977) IT WOULD APPEAR THAT ARCHIPELAGIC NEGOTIATIONS IN LOS HAVE PROGRESSED SUFFICIENTLY THAT WE MIGHT NOW ACCEPT, AS VIRTUALLY EVERY OTHER MAJOR INDUSTRIALIZED COUNTRY EXCEPT JAPAN HAS DONE, THE INDONESIAN WORDING. MOST RECENT WESTERN COUNTRY TO ACCEPT GOI WORDING, I.E., THAT PROPOSED TO US IN PARA 3, REF B, WAS FRG, WHICH SOUGHT TO COVER ITSELF BY OBTAINING GOI AGREEMENT TO AN EXCHANGE OF SIDE LETTERS WHICH "CONFIRM THAT THE CONCLUSION OF THE SAID AGREEMENT SHALL NOT PREJUDICE THE POSITION OF OUR TWO COUNTRIES WITH REGARD TO ANY QUESTIONS OF THE LAW OF THE SEA WHICH ARE UNDER DISCUSSION AT THE THIRD UNITED NATIONS CONFERENCE ON THE LAW OF THE SEA." A SIMILAR EXCHANGE MIGHT BE CONSIDERED FOR US-GOI NEGOTIATIONS. IN THE ABSENCE OF USG WILLINGNESS TO MODIFY ITS POSITION ON TERRITORIAL DEFINITION WE SEE LITTLE HOPE FOR MOVING TOWARDS CONCLUSION OF TAX TREATY. EVIDENCE AVAILABLE HERE SUGGESTS THAT GOI POSITION ON TERRITORIAL DEFINITION HAS BECOME HARDER RATHER THAN SOFTER.

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4. SINCE TERRITORIAL DEFINITION IS MORE IMPORTANT TO GOI WILLINGNESS TO MEET GOI'S ARCHIPELEGIC NEEDS CONDITIONAL ON AN INDONESIAN CONCESSION TO US ON NON-DISCRIMINATION. GOI HAS SHOWN FLEXIBILITY ON THIS ISSUE. SINCERITY OF INDONESIA'S STATED DESIRE TO FINALIZE TREATY COULD BE WELL TESTED BY ITS WILLINGNESS TO GIVE ON THIS POINT.

5. AS DEPARTMENT IS WELL AWARE, NEGOTIATION OF THIS TREATY HAS PROCEEDED ON AND OFF FOR MOST OF THIS DECADE. WE URGE THE DEPARTMENT TO RE-EXAMINE THE ISSUES WITH A VIEW TOWARDS TAKING THE STEPS NECESSARY TO REACH A SUCCESSFUL CONCLUSION TO THESE NEGOTIATIONS.
MASTERS

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